



Serving the Iowa Legislature

IOWA LEGISLATIVE INTERIM CALENDAR AND BRIEFING

September 26, 2013

2013 Interim No. 7

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Iowa Legislative Interim Calendar and Briefing is published by the Legal Services Division of the Legislative Services Agency (LSA). For additional information, contact: LSA at (515) 281-3566.

September 2013

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October 2013

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Monday, October 7, and Tuesday, October 8, 2013

Administrative Rules Review Committee

9:30 a.m., Committee Room 116, Statehouse

Wednesday, October 9, 2013

State Government Efficiency Review Committee

9:30 a.m., Room 103, Supreme Court Chamber, Statehouse

Thursday, October 10, 2013

Revenue Estimating Conference

10:00 a.m., Committee Room 116, Statehouse

Tuesday, October 22, 2013

Mental Health and Disability Services Redesign Fiscal Viability Study Committee

9:30 a.m., Committee Room 116, Statehouse

Wednesday, October 23, 2013

Public Retirement Systems Committee

Time to be announced, Committee Room 116, Statehouse

Monday, October 28, 2013

All-terrain and Off-road Utility Vehicle Study Committee

10:00 a.m., Committee Room 116, Statehouse

Stray Electric Current and Agriculture Study Committee

Time to be announced, Room 103, Supreme Court Chamber, Statehouse

Tuesday, October 29, 2013

Medical Malpractice Study Committee

Meeting canceled. See briefing page for directions for providing written information.

AGENDAS

INFORMATION REGARDING SCHEDULED MEETINGS

Administrative Rules Review Committee

Chairperson: Representative Dawn Pettengill

Vice Chairperson: Senator Wally Horn

Location: Room 116, Statehouse

Dates & Times: Monday, October 7, and Tuesday, October 8, 2013, 9:30 a.m.

Contact Persons: Joe Royce, LSA Counsel, (515) 281-3084; Jack Ewing, LSA Counsel, (515) 281-6048.

Agenda: Published in the Iowa Administrative Bulletin:

<https://www.legis.iowa.gov/IowaLaw/AdminCode/bulletinSupplementListing.aspx>

Internet Page: <https://www.legis.iowa.gov/Schedules/committee.aspx?GA=85&CID=53>

State Government Efficiency Review Committee

Co-chairperson: Senator Jeff Danielson

Co-chairperson: Representative Guy Vander Linden

Location: Room 103, Supreme Court Chamber, Statehouse

Date & Time: Wednesday, October 9, 2013, 9:30 a.m.

Contact Persons: Ed Cook, Legal Services, (515) 281-3994; Andrew Ward, Legal Services, (515) 725-2251; Rick Nelson, Legal Services, (515) 242-5822.

Agenda: To be announced.

Internet Page: <https://www.legis.iowa.gov/Schedules/committee.aspx?GA=85&CID=540>

Mental Health and Disability Services Redesign Fiscal Viability Study Committee

Co-chairperson: Senator Joe Bolkcom

Co-chairperson: Representative David Heaton

Location: Room 116, Statehouse

Date & Time: Tuesday, October 22, 2013, 9:30 a.m.

Contact Persons: John Pollak, Legal Services, (515) 281-3818; Patty Funaro, Legal Services, (515) 281-3040; Amber DeSmet, Legal Services, (515) 281-3745.

Agenda: Review status of redesign.

Internet Page: <https://www.legis.iowa.gov/Schedules/committee.aspx?GA=85&CID=849>

Public Retirement Systems Committee

Co-chairperson: Senator Thomas Courtney

Co-chairperson: Representative Dawn Pettengill

Location: Room 116, Statehouse

Date & Time: Wednesday, October 23, 2013, Time to be announced

Contact Persons: Ed Cook, Legal Services, (515) 281-3994; Andrew Ward, Legal Services, (515) 725-2251; Rick Nelson, Legal Services, (515) 242-5822.

Agenda: To be announced.

Internet Page: <https://www.legis.iowa.gov/Schedules/committee.aspx?GA=85&CID=57>

BRIEFINGS

INFORMATION REGARDING RECENT ACTIVITIES

MEDICAL MALPRACTICE INTERIM COMMITTEE

October 29, 2013—Meeting canceled

Temporary Co-chairpersons Senator Hogg and Representative Baltimore have agreed that no formal meeting of the Medical Malpractice Study Committee will be held this interim. Instead, they have requested that information be submitted from interested groups or persons relating to the committee's charge, which is to consider standards and potential options for certificate-of-merit affidavits by plaintiffs and defendants in medical malpractice actions and limitations on the number of expert witnesses that may be called by both plaintiffs and defendants in such actions.

Submitted documents should be sent electronically to Rachele Hjelmaas at Rachele.Hjelmaas@legis.iowa.gov no later than Tuesday, October 29. The submitted documents will be posted on the committee's legislative website at <https://www.legis.iowa.gov/Schedules/committeeDocs.aspx?GA=85&CID=924> (documents).

Temporary Co-chairpersons Senator Hogg and Representative Baltimore encourage all committee members to review and give careful consideration to all submitted documents for possible legislation during the 2014 Legislative Session.

ADMINISTRATIVE RULES REVIEW COMMITTEE

September 10-11, 2013

Chairperson: Representative Dawn Pettengill

Vice Chairperson: Senator Wally Horn

EMERGENCY RULEMAKING REQUEST, 2013 Iowa Acts, HF 586, provides that an agency can adopt a rule without notice only with specific statutory authority or with prior approval by the Administrative Rules Review Committee (ARRC). Under this new procedure, the committee reviews requests by agencies to adopt rules without notice at its monthly meeting or at special meetings if necessary.

Iowa Public Information Board, the rules in the board's request for approval to adopt rules without notice relate to organization and administration, and editorial changes.

Action. The ARRC approved the board's request to adopt rules without notice.

EDUCATION DEPARTMENT, *Supplementary Weighting Plan for Operational Services*, ARC 0967C, 08/21/13 IAB, NOTICE.

Background. This rulemaking is intended to comply with recent legislative changes that reauthorized and modified the current statute for supplementary weighting used for school district funding. Additional classifications of employees were allowed to be shared between districts. In addition, districts no longer need to be adjoining to participate in this program.

Commentary. A department representative explained that a dispute has arisen over the interpretation of the language of 2013 Iowa Acts, HF 472, which this rulemaking implements. The department contends that the legislation does not allow school districts to add new staff for these shared positions. The department will thus not authorize state funding when districts increase full-time equivalent positions (FTEs) for shared positions authorized by this rulemaking. The representative asserted that adding additional staff was likely not the intent of the legislature, and stated that such additions would significantly increase the cost of the legislation beyond what was projected during the 2013 Legislative Session and would be difficult for the department to administer. The representative requested guidance from the General Assembly on the intent behind this legislation and expressed openness to further work on the matter in the 2014 Legislative Session.

Public comment was heard from stakeholders, including several school superintendents, in opposition to this rulemaking. They asserted that the framework proposed by the department is unworkable for school districts, as it requires them to make staffing decisions now in order to possibly receive the additional funding for the following school year, for which they will not be eligible if they hire additional staff. A petition opposing the rulemaking signed by 230 school districts was submitted to the department.

Action. No action taken.

HUMAN SERVICES DEPARTMENT, *Iowa Health and Wellness Plan*, ARC 0972C, 08/21/13 IAB, NOTICE.

Background. These proposed rules establish the Iowa Health and Wellness Plan, which will provide special Medical Assistance (Medicaid) Program coverage to low-income Iowans, aged 19 to 64, whose countable income does not exceed 133 percent of the federal poverty level for their family size, who are not eligible for full benefits under the Medicaid State Plan or Medicare coverage, who are not pregnant, and who are not eligible for affordable employer-

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(Administrative Rules Review Committee continued from Page 3)

sponsored health care coverage. Beginning on October 1, 2013, low-income adults will be able to enroll in the new Medicaid coverage group for benefits that will begin January 1, 2014. The proposed rules include eligibility factors, benefits and service delivery provisions, and claims and reimbursement methodologies. The proposed rules do not include matters still awaiting approval by the federal Centers for Medicare and Medicaid Services, including required contributions or premiums, or the specific delivery provisions for dental services, medical homes, or accountable care organizations.

Commentary. A department representative explained that additional parts of the plan will be added by rule as they are approved by the federal government and as additional provisions of federal law become effective in 2015. This rulemaking will also be filed emergency as required by 2013 Iowa Acts, SF 446. Committee members raised concerns about how the eligibility of families with separate living arrangements would be determined. The department representative explained that the eligibility framework set out by state and federal law would already account for such situations. Stakeholders expressed concern that these rules do not address presumptive eligibility or retroactive enrollment when hospitals provide care to persons of uncertain eligibility. The department representative explained that the department is currently working with the federal government on the presumptive eligibility issue, and that while state law does not provide for retroactive enrollment, the department may be able to work with the federal government to address that issue as well.

Action. No action taken.

INSPECTIONS AND APPEALS, *Health Care Facilities—Informal Conference Process*, ARC 0922C, 08/07/13 IAB, NOTICE.

Background. Iowa Code §135C.42 provides a process for the informal conference on a contested citation issued to a care facility or assisted living program. 2013 Iowa Acts, SF 394, revises this process to require that an independent reviewer hold the informal conference rather than a representative of the department. The reviewer must be an Iowa-licensed attorney that has not been employed by the department or appeared in front of the department on behalf of a health care facility in the last eight years. At the completion of the informal conference, the independent reviewer may affirm, modify, or dismiss the regulatory insufficiency.

Commentary. A stakeholder opposed both the rules and the legislation, contending that the required qualifications for the independent reviewer would make it difficult to find a skilled reviewer. The stakeholder also contended that the department is precluded from appealing an adverse decision. Proponents contended that the legislation corrected a procedural problem where the administrative law judge was employed by the same agency that inspected the facility and pursued the complaint.

Action. No action taken.

INSURANCE DIVISION, *Regulation of Navigators*, ARC 0981C, 08/21/13 IAB, ADOPTED.

Background. The federal "Affordable Care Act" (ACA) requires state health insurance marketplaces to establish a "navigator" program that will help individuals who are eligible to purchase coverage through a health insurance marketplace to learn about their new coverage options and enroll. This rulemaking provides the licensing, training, application, and other minimum practice standards for entities and individuals acting as navigators.

No person may act as a navigator until issued a three-year Iowa navigator license by the division. Applicants must:

- Be at least 18 years of age.
- Comply with the initial training and certification requirements. Individual navigators shall complete a minimum of 32 credits of initial training in courses approved by the commissioner. Initial training must include a minimum of 2 credits of Iowa-specific training on Medicaid and healthy and well kids in Iowa (hawk-i) program training, as well as a minimum of credit in the subject of ethics.
- Have not committed any act that is grounds for license denial, suspension, or revocation.
- Submit a completed uniform application.
- Pass an examination with a score of 70 percent or higher.
- Pay the nonrefundable navigator license fee of \$20.
- Pass a background check or security screening.

Licensees must demonstrate financial responsibility and maintain evidence of financial responsibility in the form of a surety bond or other alternative financial responsibility instrument that protects individuals and entities against wrongful

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(Administrative Rules Review Committee continued from Page 4)

acts, misrepresentations, errors, omissions, or negligence of the navigator, or other violation of insurance law. The minimum coverage for financial responsibility is \$50,000.

Prior to license renewal individual navigators must complete a minimum of 36 continuing education credits for each continuing education term in courses approved by the commissioner on subjects relevant to navigators, including health insurance, tax credits, tax penalties, Medicaid, the hawk-i program, health care-related public assistance programs, or ACA-related topics.

In response to public comments, the division has eliminated references to “nonnavigators” and provided for a waiver provision regarding initial training hours due to concerns regarding access to no-cost training from the U.S. Department of Health and Human Services.

Commentary. A division representative explained the rulemaking, noting that the removed language on nonnavigators was not needed because Iowa will not have nonnavigators, and that previous uncertainty regarding access to federal training for navigators that led to the inclusion of a waiver process had been resolved. Committee members asked about another position available under the ACA, a certified application counselor. The division representative explained that a certified application counselor is a new position created through federal regulations that was not included in state legislation. Certified application counselors will have many of the same duties as navigators, but will not receive federal funding and will be subject to fewer federal requirements. The application process to become a certified application counselor will be controlled on the federal level.

Action. No action taken.

PUBLIC HEALTH DEPARTMENT, *Vital Records: Fee Increase*, ARC 0926C, 08/07/13 IAB, NOTICE.

Background. Iowa Code §144.46A creates a vital records fund under the control of the department, to be used for the purchase and maintenance of an electronic system for vital records scanning, data capture, data reporting, storage, and retrieval, and for all registration and issuance activities. Moneys in the fund do not revert to the treasury. All fees retained by the state registrar are added to the vital records fund.

Commentary. The revenue generated by this time-limited fee increase will support the development and implementation of the Iowa Vital Events System. This \$5 increase is automatically rescinded in 2019.

Action. No action taken.

REAL ESTATE COMMISSION, *Seller Disclosure Statement*, ARC 0970C, 08/21/13 IAB, NOTICE.

Background. Iowa Code chapter 543B regulates and licenses the real estate profession. Iowa Code §543B.9 empowers the commission to adopt rules “necessary” to implement Iowa Code chapter 558A relating to the disclosure of information before the transfer of real estate. Iowa Code §558A.4 requires that the disclosure statement in information relating to the condition and important characteristics of the property and structures located on the property, including significant defects in the structural integrity of the structure. The required disclosure may include information relating to the property’s zoning classification; the condition of plumbing, heating, or electrical systems; or the presence of pests.

Commentary. The existing rules set out 19 required disclosures; the proposed addition requires the disclosure of any “significant structural modification or alteration.” Committee members expressed concern over the large number of required disclosures, ranging from roof and water issues, to pest infestations, to restrictive covenants. Committee members felt that prospective buyers have some obligation to inspect the property and determine its condition. Members felt the numerous requirements placed an undue burden on the homeowner to catalog each and every defect.

Action. No action taken, additional review on final adoption.

Next Meeting. The next regular committee meeting will be held in Committee Room 116, on Monday, October 7, and Tuesday, October 8, 2013, beginning at 9:30 a.m. both days.

Secretary ex officio: Stephanie Hoff, Administrative Code Editor, (515) 281-3355.

LSA Staff: Joe Royce, LSA Counsel, (515) 281-3084; Jack Ewing, LSA Counsel, (515) 281-6048.

Internet Page: <https://www.legis.iowa.gov/Schedules/committee.aspx?GA=85&CID=53>

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SENATE COMMITTEE ON GOVERNMENT OVERSIGHT

September 17, 2013

Chairperson: Senator Janet Petersen

Vice Chairperson: Senator Brian Schoenjahn

Overview. The primary focus of the meeting concerned a review and discussion of issues which have arisen in connection with the administration of the Iowa Juvenile Home in Toledo.

Disability Rights Iowa. Ms. Jane Hudson, Executive Director, Disability Rights Iowa (DRI), provided background information on the role and authority of the organization, its investigation of the Iowa Juvenile Home (IJH), and preliminary recommendations resulting from that investigation. Ms. Hudson stated that DRI is a federally funded nonprofit law firm formed to investigate the abuse and neglect of individuals with disabilities and to pursue legal, administrative, and other remedies on their behalf. The organization is authorized pursuant to federal law to conduct investigations of facilities with residents with disabilities, monitor them for safety and compliance issues, provide information and training regarding programs serving individuals with disabilities and the rights of such individuals, and to provide legal representation and advocacy.

Ms. Hudson related that DRI conducted its first monitoring visit at IJH in November 2012, during which three girls were determined to have been living in isolation cells for a prolonged period of time. Additional problems identified by DRI included excessive and illegal use of restraints and seclusion, failure to provide education while in long-term isolation, inadequate Individual Education Plans (IEPs) for residents, inadequate transition plans for residents "aging out" of the facility, maintaining a population mix of girls and a few boys from foster home backgrounds and delinquent girls, and the observation that line residential staff, rather than treatment or educational staff, appeared more in charge of the facility's operation. Ms. Hudson indicated that, in response, numerous meetings were subsequently conducted between November 2012 and July 2013 between DRI, the Department of Human Services, and the Attorney General's Office and that improvements have been observed in the aftermath. Improvements cited included changing leadership at IJH in January 2013; stopping the use of long-term isolation cells; significantly reducing the use of restraint and seclusion and revising policies for their use to reflect best practices; providing specialized staff training; remodeling and painting of resident cottages; establishing a transition room for in-school suspension; conducting behavioral and educational assessments and developing plans; and engaging in an increased number of off-campus activities.

Ms. Hudson said that DRI's involvement at IJH continues in the form of monitoring implementation of the new policies and procedures, providing advocacy and education for residents, and pursuing a complaint filed with the Department of Education to get compensatory education for girls previously living in isolation cells. She stated that DRI's recommendations for additional improvement at IJH include transitioning from a corrections-based system to a system based on trauma-informed care, treatment, and recovery; regarding IJH as a pilot program for improving the children's mental health system in the state; forming interdisciplinary and interagency teams to facilitate departing residents' transition into adulthood; providing independent oversight of IJH; and investigating whether the educational and residential components of IJH should be managed separately.

Department of Human Services. Mr. Chuck Palmer, Director, Iowa Department of Human Services, accompanied by Mr. Rick Shults, Administrator, Division of Mental Health and Disability Services, provided the department's perspective regarding the issues and controversy at IJH. Mr. Palmer reported that IJH staff are working hard to turn the situation around and that improvements are occurring, that the Governor's Executive Order establishing the Iowa Juvenile Protection Task Force was a positive development, and that many of DRI's suggestions appear to be promising areas for the Task Force to consider. Mr. Shults added that while IJH serves residents with serious problematic and disruptive behavior, these individuals are entitled to the highest standard of care and that standard has not always been met in the past. He reiterated that improvements at IJH have been made and that there is a strong commitment in continuing to do so.

Iowa Juvenile Home. Mr. Mark Day, Interim Superintendent, IJH, provided background information regarding the operation and funding of IJH, the difficulties he has encountered since being appointed Interim Superintendent, and the efforts which are underway to make improvements. Mr. Day indicated that as of September 3, 2013, IJH was serving 38 students ranging from 12 to 18 years of age, with an average of 6 to 10 previous failed out-of-home placements, having typically suffered childhood physical or sexual abuse. He summarized the children's adjudication status and most frequent diagnoses and reasons for placement, and emphasized the extremely challenging nature of dealing with highly disruptive behavior. Mr. Day said that IJH staff have received significant new training to reduce the use of seclusion, that prolonged seclusion is not occurring, that doors have been removed from seclusion areas, and that the general trend in the use of seclusion and restraints is significantly downward. The IJH has implemented new restraint poli-

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(Senate Committee on Government Oversight continued from Page 6)

cies which exceed existing Iowa Code requirements. He emphasized that the resident population, which was already fragile, is unsettled by the efforts which are underway to make improvements which will ultimately be highly beneficial but in the short term are unfamiliar and anxiety-provoking. Mr. Day summarized 2013 IJH staff training efforts, noted that staff are putting in substantial amounts of overtime in a committed effort to make positive changes, and stated that new resident intakes are being curtailed while improvements are being implemented and empty staff positions filled. Mr. Day commented that the aging infrastructure of much of the facility is an impediment to the progress being made.

With regard to the IJH school, Mr. Day indicated the school is operated on a full-time, year-around basis, funded through a combination of Department of Education funding and a general fund appropriation, and staffed in the form of a principal and 10 certified teachers. He stated that 61 percent of the students are classified as special education, and that out of the 10 teachers, two are currently certified as special education instructors. Classroom size has been reduced from 10 to 7 students, a transition classroom has been made available for youth unable to remain in regular classrooms due to disruptive behavior, and IJH is collaborating with the local Area Education Agency to improve special education efforts.

Department of Education. Dr. Brad Buck, Director, Iowa Department of Education, accompanied by Dr. W. David Tilly, Deputy Director, Division of Learning and Results, and Dr. Jeff Berger, Deputy Director, Division of School Finance and Support Services, provided input from the department regarding improvement efforts underway at the IJH school. Dr. Buck stated that the department is excited by the prospect of improving lives through collaborative efforts to facilitate better education at IJH, and is committed to implementing the Task Force recommendations. With regard to the DRI complaint concerning access to education while in seclusion, top-level department staff made an on-site visit to IJH in mid-August as part of a compliance review required to be conducted at five-year intervals, and are currently in the process of formulating recommendations based on that review. The rationale for classifying the IJH school as a "program" rather than a "school" and the department's authority in overseeing and approving the program was discussed, as well as efforts to become current on resident IEPs and make necessary improvements in the IEP process.

Committee Discussion. Committee discussion included inquiries regarding the hiring process currently underway for new staff and a timeline for hiring a permanent superintendent, the necessity for and frequency of isolation of a resident from the rest of the resident population, the range in classification of IJH students as special education and whether a sufficient number of certified teachers exist, the safety of resident cottages, the extent of collaboration between IJH and the local Area Education Agency, how the IJH school program is funded, whether the Department of Education has documented that residents in seclusion were denied access to education, and the concern that an adequate system of checks and balances regarding management versus oversight of IJH may not be in place.

LSA Contacts: Richard Nelson, Legal Services, (515) 242-5822; Deb Kozel, Fiscal Services, (515) 281-6767.

Internet Page: <https://www.legis.iowa.gov/Schedules/committee.aspx?GA=85&CID=538>

LEGAL UPDATES

Purpose. A legal update briefing is intended to inform legislators, legislative staff, and other persons interested in legislative affairs of recent court decisions, Attorney General opinions, regulatory actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. As with other written work of the nonpartisan Legislative Services Agency, although this briefing may identify issues for consideration by the General Assembly, nothing contained in it should be interpreted as advocating a particular course of action.

LEGAL UPDATE—REGULATION OF DENTAL INSURANCE PLANS

Filed by the Iowa Supreme Court

May 17, 2013

Iowa Dental Association v. Iowa Insurance Division and Iowa Insurance Commissioner and Federation of Iowa Insurers

No. 12-1280

http://www.iowacourts.gov/About_the_Courts/Supreme_Court/Supreme_Court_Opinions/Recent_Opinions/20130517/12-1280.pdf

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(Legal Update—Regulation of Dental Insurance Plans continued from Page 7)

Factual Background. This case relates to a statute that regulates the contractual relationships between Iowa dentists and insurers that provide dental insurance plans. Dental plan contracts usually include fee schedules which set the maximum amount a dentist can charge for particular services. Dental plans often exclude coverage for certain services, such as cosmetic dentistry and teeth whitening, and even when services are covered, coverage limits such as deductibles, maximum annual benefits, waiting periods, and frequency limitations may apply. For example, a frequency limitation might provide that patients will be reimbursed for up to two teeth cleanings per year, but not for additional cleanings within that same time period.

Prior to 2010, some dental plan contracts contained maximum fee schedules even for dental services that were excluded under the dental insurance plans, such as teeth whitening. In 2010, the Iowa Legislature enacted Iowa Code §514C.3B(1). The new law provides:

1. A contract between a dental plan and a dentist for the provision of services to covered individuals under the plan shall not require that a dentist provide services to those covered individuals at a fee set by the dental plan unless such services are covered services under the dental plan. (Iowa Code §514C.3B(1))

The statute defines “covered services” as “services reimbursed under the dental plan”. (Iowa Code §514C.3B(3)(a)). The statute also states in Iowa Code §514C.3B(4) that:

4. Nothing in this section shall be construed as limiting the ability of an insurer or a third-party administrator to restrict any of the following as they relate to covered services:
 - a. Balance billing.
 - b. Waiting periods.
 - c. Frequency limitations.
 - d. Deductibles.
 - e. Maximum annual benefits.

Following enactment of the law, insurers continued to impose maximum fees on services that were actually reimbursed under their dental plans. But some insurers also imposed maximum fees on services that were potentially reimbursable but were not actually reimbursed in a particular circumstance. For instance, a plan contract might require that a dentist charge no more for a third teeth cleaning in a year that is not covered by the plan, than for the first two teeth cleanings that are actually reimbursed by the insurer.

Procedural Background.

Insurance Division. In August 2011, the Iowa Dental Association (Dentists) filed a request with the Insurance Division for a declaratory order clarifying the meaning of “covered services” in Iowa Code §514C.3B. The Dentists stated that they faced “conflicting interpretations” of the statute, with the Dentists arguing that services not actually reimbursed by the insurer are not “covered services” subject to the insurers’ fee schedules and with the insurers arguing that they are “covered services.” The Federation of Iowa Insurers (Insurers) which represents dental plan providers in the state petitioned and was allowed to intervene in the matter.

The Dentists specifically requested an answer to the question:

Is an insurer permitted to impose and enforce a maximum fee for services that are not reimbursed under the dental plan (except for standard copayments or deductibles paid by the patient) due to limitations related to balance billing, waiting periods, frequency limitations, deductibles, and maximum annual benefits?

In November 2011, the Insurance Commissioner issued a declaratory ruling that agreed with the Insurers’ position that “covered services” include services that can be reimbursed generally, but are not actually reimbursed in a particular instance due to a policy restriction. The commissioner indicated that this interpretation gives meaning to Iowa Code §514C.3B(4) and also better serves patients by giving them certainty in the amount that will be charged for a particular dental service and by allowing insurers to keep prices down.

Polk County District Court. In December 2011, the Dentists filed a petition in Polk County District Court requesting judicial review of the commissioner’s order. The Insurers filed a brief in opposition. The district court affirmed the commissioner’s declaratory ruling concluding that the Insurance Commissioner was vested with interpretive authority under Iowa Code chapter 505 and that the commissioner’s interpretation of “covered services” was not irrational, illogical, or wholly unjustifiable.

Iowa Supreme Court (Court)—Issue on Appeal. Whether to affirm the Insurance Commissioner’s declaratory order

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(Legal Update—Regulation of Dental Insurance Plans continued from Page 9)

that dental services ordinarily reimbursable, but not actually reimbursed due to some plan limit, are “covered services” under Iowa Code §514C.3B that are subject to insurers’ fee schedules.

Analysis and Holding.

The Scope of Review in This Case is for Errors of Law. In an appeal of a district court’s review of agency action, the Court reviews the agency’s interpretation of a provision of law under either the highly deferential “irrational, illogical, or wholly unjustifiable” standard, or the nondeferential errors-at-law standard. Deference is given to an agency only if the Legislature clearly vested authority to interpret the provision with the agency.

The Court held that in this case, interpretive authority concerning the phrase “covered services” has not been clearly vested with the Insurance Commissioner, and in fact the Legislature has provided its own definition of the term at issue. This indicates that the Court, not the agency, ought to apply the legislative definition. The Court also found that the relevant word “reimbursed” in the definition of “covered services” is not a substantive term within the special expertise of the Insurance Commissioner.

A Service is “Covered” Within the Meaning of Iowa Code §514C.3B Only if it is Actually Reimbursed to Some Extent Under the Dental Plan. Construing Iowa Code §514C.3B in its entirety, the Court found that the only evident policy of the statute is to prohibit an insurer from imposing fee schedules on the provision of dental services that are not covered by the plan. Before the enactment of the statute, some dental plans contained maximum fees that dentists could charge for services that were never reimbursable under their dental insurance plans, like teeth whitening.

The Court held that a dental service is “covered” within the meaning of the Code section only if it is actually reimbursed to some extent under the dental plan, not just reimbursable in some instances. If the Legislature wanted to provide that insurers could impose maximum fees on services that were reimbursable, but were not reimbursed in a particular instance because of a plan limit, it could have said that directly by using the word “reimbursable” instead of “reimbursed” in the definition of “covered services.” Other states have used the word “reimbursable” in similar statutes.

The argument by the Insurance Commissioner and the Insurers that their interpretation of the statute better protects consumers presumes that in enacting Iowa Code §514C.3B, the Legislature’s intent was to favor the interests of consumers over those of dentists. It appears that the intent of the Legislature was to balance the interests of both groups.

Under the statute, an insurer is allowed to impose a maximum fee only on a service that is actually reimbursed by a dental plan. For example, a third teeth cleaning in a year which is not reimbursed by a dental plan due to a frequency limitation, is not considered “covered” under the statute just because teeth cleaning generally is a “covered service”, and cannot be subject to a maximum fee schedule imposed by the insurer.

The District Court Erred in Upholding the Insurance Commissioner’s Declaratory Ruling. The Court reversed the district court and remanded the case for proceedings consistent with this opinion.

LSA Monitor: Ann Ver Heul, Legal Services, (515) 281-3837.